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August 5, 2013

VIA ECF

The Honorable Donovan W. Frank
United States District Court Judge
724 Federal Building, 316 N. Robert Street
St. Paul, MN 55101

Re: *Wersal v. LivingSocial* (Court File: 13-cv-381 (DWF/FLN))

Dear Judge Frank:

My firm represents LivingSocial. We suggest that the Court deny Mr. Wersal's request for permission to file a motion for reconsideration. The new authority on which he relies — the Eighth Circuit's decision in *Charvat* — focused on an "informational injury" that has nothing to do with this Court's reasoning in dismissing Mr. Wersal's case.

This Court dismissed Mr. Wersal's case because Mr. Wersal never tried to use his voucher and thus suffered no injury that could conceivably have been caused by an expiration date. In *Charvat*, the Eighth Circuit found standing where the plaintiff had alleged that he was entitled to receive certain information (an on-machine notice of ATM fees) but did not receive it. The Eighth Circuit's opinion says that "[d]ecisions by this Court and the Supreme Court indicate that an **informational injury** alone is sufficient to confer standing. . . ." (Slip Op. at 6 (emphasis added)). *Charvat* discusses a 1998 Supreme Court case (*Atkins*) in which "the plaintiff fails to obtain information" and a 1980 Eighth Circuit decision (*Dryden*) in which a borrower "proved that the disclosure provisions" were violated. *Charvat* at 6-7. *Charvat* (like *Atkins* and *Dryden*) focuses on a plaintiff who was not provided with information to which he was entitled. By contrast, Mr. Wersal's case focuses on whether a voucher that he never tried to use can be subject to an expiration date. He makes no allegation of any kind that he was entitled to receive certain information but did not receive it.

This Court has already entered judgment in Mr. Wersal's case and closed the file. The *Charvat* case does not justify reopening it.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Robert J. Gilbertson".

Robert J. Gilbertson

RJG/jmo